



## **Far West Division Frequently Asked Questions (FAQ) on Ski Patroller Liability and Good Samaritan Laws in California**

The following is a position paper to be considered by National Ski Patrol members patrolling within the Far West Division. It is intended to inform patrollers of their protections and exposure to risk while performing tasks that patrollers are often asked to perform while on duty at ski areas, and often perform acting as Good Samaritans while off of ski patrol duty; and equally important how to manage these risks.

This paper asks and answers six important questions regarding liability exposure and protection with respect to recent California Good Samaritan legislation and the limited protection provided by our National Ski Patrol insurance policy.

Whereas this paper references California law, those members registered within Nevada and Arizona areas should consult with their regional legal advisors to clarify if there are any unique differences from what is presented within this paper.

### **Are NSP members immune from personal liability under the California Good Samaritan statute while “on duty” providing ski patrol services at a ski area in this state?<sup>1</sup>**

There is no case in California directly answering this question. The California Good Samaritan statute essentially gives immunity from civil damages to a person who “in good faith, and not for compensation” provides “emergency medical or nonmedical care or assistance at the scene of an emergency.” Most ski areas in North America provide ski patrol first aid services as part of the cost of a lift ticket. For this reason, it seems that the “not for compensation” requirement of the Good Samaritan Statute would not be satisfied when a ski area’s patroller provides emergency medical or non-medical care to a customer. The injured skier receiving first aid has in some sense paid for the service through the lift ticket and is an authorized visitor at the ski area.

The Joint Statement of Understanding between the National Ski Areas Association, Inc. (“NSAA”) and the National Ski Patrol System Incorporated states: “(1) *A Patrol, once established at a given ski area, is under the supervision and control of the ski area management and must abide by the policies and procedures established by that ski area’s management. It is specifically agreed and understood that NSP does not control the patrol activities of patrollers while they are patrolling at their respective ski areas. . . . (6) It is recognized that ski area management ultimately supervises and controls patrolling activities of individual NSP members and NSP Patrols at each*

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<sup>1</sup> The geographical area of Far West Division includes three US states, namely California, Nevada, and Arizona. Nevada and Arizona have Good Samaritan laws similar to California’s, but regional legal advisors in those states are in the best position to advise whether their state’s laws differ in any material respects from California’s as explained here.



*ski area. As such, it is understood and it may be asserted, that the ski area bears legal responsibility for patrolling activities that fall within the scope of duties of the Patroller. It is also understood and agreed that NSP provides educational training to individual patrollers in the classroom and on the slopes, including, but not limited to, toboggan handling training, OEC certification and annual refreshers.”* This agreement also makes clear that, if a customer sues the ski area, the ski area will not make legal claims against NSP or an individual patroller for ski patrol activities over which the ski area had supervision and control. However, the statement confirms that “volunteer patrollers are not and have not been employees, but agents when acting within the scope of their assigned duties, in view of the voluntary nature of their patrolling services.” Of course, this agreement is not binding on ski areas that are not members of the NSAA, but hopefully this statement sets an industry standard for all ski areas.

Therefore, while “on duty” performing ski patrol services at a ski area, a NSP ski patroller who is not a paid employee of the ski area is nevertheless under the direction and control of ski area management. As such, the ski area is liable for the conduct of the unpaid NSP ski patroller in the same way it is responsible for the conduct of its paid patrollers. An individual may be personally liable for reckless or intentional misconduct. This means that ski patrollers, *whether paid or unpaid, may be personally liable for their grossly negligent, reckless or wanton misconduct while “on duty” at a ski area.* Possible examples of this would arise if a ski patroller causes an injury to a member of the public while intoxicated or under the influence of drugs while on duty, or if a ski patroller causes an injury while skiing out of control.

Medical and non-medical emergency care by a NSP member to a visitor at a ski area who has not purchased a ticket may be within the Good Samaritan statute’s provisions.

Some NSP members provide Nordic volunteer ski patrol services on public lands. In many of those situations, the ski patrollers are operating under a memorandum of understanding (MOU) with the agency responsible for managing those public lands. Federal law provides protection to volunteers who are covered by a MOU with the agency. But, if no MOU applies, then the Good Samaritan statute (AB 83, Aug. 2009) probably would apply in California assuming there is no compensation from the patient to the ski patroller providing emergency services.

### **Are NSP members protected by the California Good Samaritan statute when providing emergency care other than while “on duty” ski patrolling?**

If a NSP member provides emergency medical (first aid) or non-medical care (extrication at a scene or transportation of an injured person), on a volunteer basis to a person who is injured or ill, the California Good Samaritan statute (AB 83, Aug. 2009) provides immunity from liability for any negligence in providing that emergency care.



No immunity is provided for *grossly negligent or wanton misconduct* while providing the emergency care.

An important aspect of the statute is that the emergency care be provided “not for compensation.” While the statute is not clear on this point, it is best to assume that the statute is only available if the NSP member is not compensated by an organization at the time of providing services, and the injured person receiving the services does not compensate the NSP member. Of course, sometimes, people express their gratitude later to the person providing emergency care, but we do not believe that is the kind of “compensation” referenced in the statute.

### **Does a NSP member have immunity from liability when performing services as part of a disaster relief group in California?**

California recently passed an immunity statute (SB 39, Aug. 2009) to protect disaster service workers performing disaster services under the authority of a government emergency organization during a declared state of emergency, state of war, or local emergency (forest fire, earthquake, flood, etc.). This immunity provides liability protection for a death or injury to a person and damage to property. This statute applies to NSP members when providing disaster services as part of a local CERTS group, or as a member of a volunteer disaster relief group organized by a governmental agency.

The Far West Division currently has an MOU with the California emergency services agency that makes NSP members available for use by that agency in disasters. This statute provides immunity for injuries or property damage caused by a NSP member while performing services at that time.

### **Should NSP members have personal umbrella liability insurance?**

Personal umbrella liability insurance questions should be discussed with your knowledgeable insurance broker.

### **Does National Ski Patrol, Inc. provide insurance to protect NSP members while performing ski patrol services?**

*No.* The insurance carried by National Ski Patrol, Inc. only provides liability protection to NSP certified NSP instructors while performing NSP instructional services during registered NSP courses. It is prudent that all NSP instructors ensure that they register *any and all* NSP educational courses.



**In California, is a NSP member covered by workers compensation insurance for injuries suffered by the patroller while “on duty” providing ski patrol services at a ski area?**

*No.* A California statute specifically excludes volunteer ski patrollers from workers compensation insurance.

*Nevada and Arizona workers compensation programs may vary from California’s program. NSP members in other states should determine through their local legal advisor or ski area management whether volunteer ski patrollers in that state are covered by the state’s workers compensation insurance system.*

Therefore, it is important for NSP ski patrollers to have adequate personal medical insurance. NSP ski patrollers should not expect the ski area to pay for the cost of medical treatment or other losses suffered from injuries sustained while providing ski patrol services at the ski area.